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Foley & Lardner LLP
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In re Application of
MIOSKOWISKI et al. :
U.S. Application No. 10/519,764 :
PCT No.: PCT/FR03/01979 :
Int. Filing Date: 26 June 2003 : DECISION ON REQUEST
Priority Date: 28 June 2002 :
Attorney Docket No.: 355901-0106 :
For: LACTONE COMPOUNDS WHICH CAN
BE USED AS ANTIOXIDANT AGENTS
IN PHARMACEUTICAL COSMETIC OR
FOOD COMPOSITIONS AND THEIR
METHOD OF PREPARATION

This decision is in response to applicant's "Petition under 37 CFR 1.181(a) to Invoke the Supervisory Authority of the Director" filed 09 April 2007, which is being treated as a renewed petition under 37 CFR 1.181 requesting withdrawal of the Notification of Abandonment mailed by the Office on 17 July 2006. No petition fee is required.

BACKGROUND

On 26 June 2003, applicant filed the above-captioned international application which claimed a priority date of 28 June 2002 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 08 January 2004. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 28 December 2004.

On 28 December 2004, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia,: the basic national fee; a copy of the international application; an unexecuted declaration; and a preliminary amendment.

On 20 September 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 was omitted. A new oath or declaration in compliance with 37 CFR 1.497 and a

surcharge for providing the oath or declaration later than 30 months from the priority date were required. The notification set a two-month time limit in which to respond.

On 17 July 2006, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 20 September 2005 within the time period set therein.

On 18 August 2006, applicant filed a "Petition under 37 CFR 1.181(a) to Invoke the Supervisory Authority of the Director." In a decision dated 23 March 2007, applicant's petition under 37 CFR 1.181 was dismissed without prejudice.

On 09 April 2007, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

Applicant states in their present petition that a declaration and power of attorney was received at the United States Patent and Trademark Office on 18 January 2006. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"If a receipt of any paper filed in the Patent and Trademark Office is desired, it may be obtained by enclosing with the paper a self-addressed postcard identifying the paper. The Patent and Trademark Office will stamp the receipt date on the card and place it in the outgoing mail.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Based on applicant's statements in the present petition and the itemized postcard bearing the 18 January 2006 receipt stamp, it is concluded that materials accompanying the present petition (i.e., the "Response To Notice To File Missing Parts Of An Application" and the executed declaration) were originally filed herein on 18 January 2006 as a timely response to the Notification Of Missing Requirements mailed 20 September 2005.

The Notification Of Abandonment mailed 17 July 2006, based as it was on applicant's purported failure to file a timely response to the Notification Of Missing Requirements, is appropriately withdrawn.

A review of the declaration filed 18 January 2006 confirms that the declaration is in compliance with 37 CFR 1.497.

CONCLUSION

The petition to withdraw the holding of abandonment is **GRANTED**.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed 17 July 2006 is hereby VACATED.

The executed declaration attached to the present petition will be treated as having been filed on 18 January 2006 as a timely response to the Notification Of Missing Requirements (Form PCT/RO/905) mailed 20 September 2005.

This application is being referred to the National Stage Processing Branch of the International Division for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 18 January 2006.



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